

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CRM-M-22113-2020.

Date of Decision: 18.04.2022.

Sonu Singh

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. R.K. Arya, Advocate for petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Sonu Singh** in case FIR No.93 dated 03.05.2020 under Section 22 of NDPS Act and Section 188 IPC (Section 29 of NDPS Act added lateron), registered at Police Station Shahkot, District Jalandhar (Rural).

In compliance of order dated 10.03.2022, additional affidavit dated 18.04.2022 of Jasbinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Shahkot, Jalandhar, has been filed today in the Court, which is taken on record and the copy thereof has been supplied to learned counsel for the petitioner.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner are altogether false and frivolous and there is no iota of truth therein. He further urges that alleged recovery of

3950 loose intoxicant tablets shown at the instance of petitioner is planted one. He further urges that alleged recovery of contraband is highly doubtful as mandatory provisions of Section 50 of NDPS Act, were not complied with. He further urges that no public witness was joined by the Investigating Agency before conducting personal search of the petitioner. He further submits that petitioner is languishing in custody since 03.05.2020. He further submits that after presentation of final report as envisaged under Section 173 Cr.P.C. (*Challan*), trial has already commenced. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that on 03.05.2020 during patrolling by the police, on suspicion of having some intoxicant substance in the polythene bag carried by the petitioner, he was apprehended. He further urges that petitioner was informed that he had a legal right to get his search effected in the presence of a Magistrate or a Gazetted Officer but he opted to get his search effected by the Investigating Officer and to this effect consent memo was prepared. He further urges that though efforts were made to join independent witness but on account of imposition of curfew due to pandemic COVID-19, public witness could not be joined. He further urges that during search of polythene bag being carried by the petitioner, 3950 loose intoxicant tablets of white colour were recovered. He further urges that above said intoxicant tablets were kept in the same polythene bag and then sealed with the seal bearing inscription 'SS'. He further urges that

thereafter petitioner alongwith case property was produced before the Station House Officer, who after having seen the case property seized the same with his seal and thereafter the case property was deposited in the Malkhana of Police Station Shahkot. He further urges that thereafter petitioner as well as case property were produced in the Court and then sealed parcel was opened in the presence of Judicial Magistrate, where two samples of 30 tablets each were taken out from the entire lot and the same were sealed by the Court. He further urges that during investigation, petitioner disclosed that above said contraband was bought by him from some unknown person on payment of Rs.40,000/- and it was to be delivered to Sewak Raj @ Happy son of Balwinder Singh, resident of Patti Haveli Malsiha and Ricky son of Prem Lal, resident of Malsia and on the basis of said disclosure statement, above said Sewak Raj @ Happy and Ricky were nominated as accused in the instant case and accordingly offence under Section 29 of NDPS Act was added. He further urges that on 04.05.2020 co-accused namely Sewak Raj and Ricky were arrested and from their possession drug money amounting to Rs.12,000/- and Rs.3000/- respectively was recovered. He further urges that on 18.05.2020, sample parcel of 30 intoxicant tablets was sent to FSL for analysis and vide FSL report dated 23.07.2020 (Annexure R-1), sealed parcel bearing two seals of 'TJ' was found intact and tallied with the specimen seal impression and the average weight of each tablet was found to be 409 mg and on analysis one tablet was found containing *Tramadol Hydrochloride* to the extent of 99.8 mg. He further urges that in case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), quantity of

neutral substance(s) is not to be excluded and to be taken into consideration alongwith actual content by weight of offending drug and to this effect, reliance has been placed on decision of Hon'ble Supreme Court in **Hira Singh and another Vs. Union of India and another**, 2020(2) RCR (Criminal) 523. He further submits that weight of one tablet is stated to be 409 mg and as such total weight of 3950 tablets comes to 01 Kilogram - 615.55 grams, which falls under "commercial quantity" and, thus, in view of bar created by Section 37 of NDPS Act, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as replies furnished at the instance of respondent-State.

Hon'ble Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In case **Union of India Vs. Ram Samujh and Ors.**, 1999(9) SCC 429, it has been elaborated as under:-

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly

*observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa (1989(2) RCR(Criminal) 505: (1990) 1 SCC 95)** as under:-*

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in spirit with which Parliament, after due deliberation, has amended.”

Hon'ble Supreme Court in case **State of Kerala Etc. Versus Rajesh Etc., 2020(1) R.C.R. (Criminal) 818** while dealing with provisions of Section 37 of NDPS Act, has laid down as under:-

“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case in hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

Allegedly, petitioner was apprehended having conscious possession of 3950 loose intoxicant tablets. Vide FSL report dated 23.07.2020 (Annexure R-1), above said contraband was found containing "Tramadol Hydrochloride" and the actual quantity thereof comes to 01 Kilogram - 615.55 grams.

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that alleged recovery of contraband (**Tramadol Hydrochloride**) from the petitioner falls under "commercial quantity" and the fact that allegations against the petitioner are serious in nature, thus, in view of rigours of Section 37 of NDPS Act, he does not deserve the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

18.04.2022

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No